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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,874	03/26/2004	James Stephen Clark	82652	9759

22242 7590 06/20/2005

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EXAMINER

LE, MARK T

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

✓9

Office Action Summary

Application No. 10/810,874	Applicant(s) CLARK ET AL.	
Examiner Mark T. Le	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The prior art cited in Application No. 10/260,322 has been reviewed.
2. Applicant's election without traverse of Group I, Species shown in Figures 5-8, in the reply filed on June 6, 2005, is acknowledged.
3. The abstract of the disclosure is objected to because it is too long. Correction is required. See MPEP § 608.01(b).
4. Claims 6-11 and 19-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6, the reference to the AAR Plate F clearances, and in claim 7, the reference to length of a standard product are considered to be indefinite because the dimensions associated with said references are not clearly defined.

In claim 19, line 5, it is not clear as to what structure is being referred to by the word "which". On the other hand, it does not appear that said word "which" refers to the posts because the posts of the present invention are connected to the center sill and top chord.

In claim 20, "said one or more structural supports" lacks antecedent basis.

Claims 8-11 are indefinite because they depend from an indefinite base claim.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Saxton (US 6,431,085).

Saxton discloses a center beam railcar having all the features as recited in the instant claims, including winches 60 for receiving longitudinal flexible members in the form of straps. Note that winches 60 have the capability of longitudinally adjusting the straps so that the straps could tightly secure loadings on the railcar; therefore, winches 60 of Saxton are readable as "longitudinally adjustable retainers".

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Saxton (US 6,431,085).

Saxton is applied above.

Regarding the instant claimed width of the strap being 4.5 inches, it is not clear as to the width of the straps used in the structure of Saxton; however, the strength of a strap is generally proportional to the width of the strap, i.e. wider straps are generally stronger than narrower width straps; therefore, it would have been obvious to one skilled in the art to use straps of a width, such as 4.5 inches, in the structure of Saxton so as to achieve the expected strength thereof for safely securing loadings on the railcar.

9. Claims 1-9 and 19-20 (6-9 and 19-20 as best can be determined) are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark (US 6,550,398) in view of Saxton (US 6,431,085).

Clark discloses a center beam railcar, similar to that recited in the instant claims, wherein, center beam 10 has a height greater or equal to that of end bolsters 14 that are function as bulkheads to provide support for and to retain loadings; and wherein, top chord 20 has a width that is not substantially greater than the width of the intermediate structure of the center beam. It is noted that Clark does not show a center sill, and bulkheads. However, center sills and bulkheads are well known structures in center beam railcars. Note for example, center beam 26 and bulkheads 20,22 of Saxton. Accordingly, it would have been obvious to one skilled in the art to substitute a well known form of bulkheads generally used on center beam railcars for the end bolsters of Clark for performing the same expected function of supporting and retaining loadings,

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and it would have been obvious to one skilled in the art to include a well known center sill in the railcar of Clark, in a manner similar to that shown in Saxton, so as to provide rigidity to the railcar.

Regarding the instant claimed shape of the top chord being rectangular or square shaped, consider the square or rectangular shaped top chord 28 of Saxton. In view of Saxton, it would have been obvious to one skilled in the art to substitute a square or rectangular top chord, similar to that taught in Saxton, for the top chord of Clark because in certain instances, square shaped structural members may be more available than the structural member used as the top chord of Clark.

Regarding the instant claimed length of the end portion and the height of the first deck above the second deck, as recited in instant claims 7-8, note that the structure of Clark inherently has such length and height when the loadings selected to be carried by the railcar are of such dimensions to present such length and height as claimed.

Regarding the instant claimed flexible securing members and winches, recited in instant claim 9, Applicant should consider strap winches 60 of Saxton, which inherently comprise flexible securing members in the form of straps. In view of Saxton, it would have been obvious to one skilled in the art to provide strap winches, similar to that of Saxton, along with straps for operating with the strap winches, in the structure of Clark so as to secure loadings on the railcar.

10. Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 9 above, and further in view of Walsh (US 6,015,250).

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Regarding the instant claimed means for securing loadings as recited in claim 10, Applicant should consider the structure of Walsh, which is provided with sufficient lengths of straps for extending over loadings, winches on one side sill for adjusting the straps, and retaining means on the other side sill for securing the free ends of straps.

In view of Walsh, it would have been obvious to one skilled in the art to alternatively provide means for securing loadings, including sufficient lengths of straps for extending over loadings, winches on one side sill for adjusting the straps, and retaining means on the other side sill for securing the free ends of straps, in a manner similar to that taught by Walsh, so as to safely secure loadings.

Regarding the instant claimed elongated structural supports, recited in instant claim 11, consider the same shown in Figure 1 of Clark.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 571-272-6682. The examiner can normally be reached on Mon-Fri (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark T. Le
Primary Examiner
Art Unit 3617

mle
6/15/05